

Anthony Cicciari

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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4 LOUIS PICCOLO, individually and on behalf of
those individuals similarly situated,

5

Plaintiff,

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INDEX #

-against- 16-CV-06930

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(GRB)

TOP SHELF PROVISIONS CO. INC., RICH

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DAHLEM and ANTHONY CICCARI,

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Defendants.

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1 Corporate Drive

Bohemia, New York

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July 25, 2018

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10:03 a.m.

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EXAMINATION BEFORE TRIAL of ANTHONY

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CICCARI, the Defendant herein, taken by the

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Plaintiff pursuant to Notice and Order, held at

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the above-mentioned time and place, before a

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Notary Public of the State of New York.

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1 A P P E A R A N C E S:

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14 ALSO PRESENT:

15 LOUIS PICCOLO

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JUDGE'S EXCERPT

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MR. ZABELL: Good morning, Judge
Brown.

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JUDGE BROWN: Good morning. Who is
this?

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MR. ZABELL: Saul Zabell.

8

JUDGE BROWN: Am I on speakerphone?
Can the court reporter hear me?

10

MR. ZABELL: Barely, but we are
working on it, Judge.

12

JUDGE BROWN: I will get a little
closer. How is that?

14

MR. ZABELL: Very good.

15

JUDGE BROWN: So I'm going to
instruct the reporter to take down
this portion of the proceedings and
file it when it is produced as a
separate portion of the transcript.
That will be a ruling of the court.

21

Go ahead, who would like to lead
off?

22

23

MR. ZABELL: I would like to lead
off because I made the call.

24

Anthony Cicciari

1 MR. LaBUDA: Good morning, your
2 Honor. I just want to note for the
3 record that you have Joseph LaBuda,
4 you have the deponent, Anthony
5 Cicciari, in the room along with Louis
6 Piccolo who is the plaintiff.

7 JUDGE BROWN: Okay, good.

8 MR. ZABELL: Judge, at this point,
9 I'm going to ask that my application
10 be heard outside of the presence of
11 the deponent, Mr. Cicciari, as it
12 reflects --

13 MR. LaBUDA: Cicciari.

14 MR. ZABELL: -- as it reflects some
15 confidential information and an
16 indication of the line of questioning
17 that I plan on going down.

18 JUDGE BROWN: Any objection?

19 MR. LaBUDA: Yes. I think he
20 should be present. He has been asked
21 plenty of these questions before so I
22 think he should be present.

23 JUDGE BROWN: I don't expect you
24 two to agree about anything because of

Anthony Cicciari

1 what I know so far. The witness can
2 stay but if we get to a point where
3 there is confidential information
4 involved, I will excuse the witness.

5 MR. ZABELL: We are about a half
6 dozen questions in and I asked Mr.
7 Cicciari about how much he earned at
8 Top Shelf.

9 JUDGE BROWN: Okay, hold on. Why
10 can't he answer that question?

11 MR. LaBUDA: It is harassing, Your
12 Honor.

13 JUDGE BROWN: No, it's not. He
14 answers the question.

15 Next.

16 MR. LaBUDA: On top of that --

17 JUDGE BROWN: No on top that. We
18 are not going to keep arguing. I
19 ruled.

20 Next.

21 MR. ZABELL: Then I asked Mr.
22 Cicciari if he was instructed on how
23 to answer any questions at this
24 proceeding.

Anthony Cicciari

1 JUDGE BROWN: That question can be
2 answered yes or no.

3 What is next?

4 MR. ZABELL: Mr. LaBuda doesn't
5 seem to recall the rulings Your Honor
6 made at Rich Dahlem's deposition.

7 JUDGE BROWN: Do me a favor, don't.
8 Let's not --

9 MR. ZABELL: Okay.

10 JUDGE BROWN: -- spin it. Just
11 tell me what the questions are.

12 All right, go ahead.

13 MR. ZABELL: So Mr. LaBuda
14 continues to make inappropriate
15 objections to the questions I'm
16 asking, objections such as leading,
17 assumes facts not in evidence,
18 ambiguous.

19 MR. LaBUDA: Judge, we went through
20 this last time. He wouldn't utilize
21 the federal stip and I'm doing as the
22 court instructed which is making my
23 objections as short and concise as
24 possible, but he refuses as he did

1 yesterday when he was calling me a
2 moron and telling me to shut up, he
3 says he is not going to use the
4 federal stips so I'm put in a position
5 of having to make the objections.

6 JUDGE BROWN: If you have not
7 stipulated to reserving the
8 objections, you're forcing him to make
9 the objection.

10 MR. LaBUDA: We went through this
11 last time.

12 MR. ZABELL: Judge, I'm quoting
13 from a wise man named Judge Brown when
14 I say: Are you agreeing that all
15 objections other than those as to form
16 are reserved for the time of trial.
17 Do you agree with that? Yes, Judge
18 Brown, that's agreed.

19 JUDGE BROWN: Are you agreeing to
20 that here?

21 MR. LaBUDA: Yes. He didn't say
22 that, Judge.

23 MR. ZABELL: That's how we agreed
24 at the time of Mr. Dahlem's hearing to

1 proceed with all depositions.

2 MR. LaBUDA: This is a different
3 deposition.

4 JUDGE BROWN: Are we agreeing to
5 that for all depositions going
6 forward? Good?

7 MR. LaBUDA: Yes, that's fine.

8 JUDGE BROWN: With that agreement
9 in place, I am now ruling that for all
10 future depositions, the appropriate
11 objection is objection to form and
12 then let the witness answer.

13 MR. LaBUDA: That's fine. Thank
14 you, Judge.

15 MR. ZABELL: Judge, as was
16 addressed at Mr. Dahlem's deposition,
17 there was an issue about phone usage
18 during the deposition. You indicated
19 that phones should be off during the
20 deposition. Mr. LaBuda can be given
21 -- I told him he would be given time
22 to check his messages during breaks.
23 He is refusing to shut it off and he's
24 instructing the deponent not to,

Anthony Cicciari

1 although I believe Mr. Cicciari has
2 turned his off but Mr. LaBuda has not
3 turned it off. I'm just asking that
4 the phones be off.

5 JUDGE BROWN: Mr. LaBuda, any
6 objection?

7 MR. LaBUDA: Your Honor, I would
8 like to be able to check my e-mails.
9 There are times that Mr. Zabell is
10 asking the same questions like ten
11 times so --

12 JUDGE BROWN: Do it during the
13 breaks. How is that?

14 MR. LaBUDA: That's fine. It just
15 may cause more delays but that's fine.

16 JUDGE BROWN: No, it doesn't. You
17 only use your phone for other business
18 during the breaks.

19 MR. LaBUDA: That's what I am
20 saying but I agreed to periodically
21 check my e-mails. There's other cases
22 that have time issues.

23 JUDGE BROWN: The periods are the
24 breaks.

Anthony Cicciari

1 Go ahead.

2 MR. ZABELL: We are just here for a
3 very short period of time so that
4 concludes my issues, Judge.

5 MR. LaBUDA: Your Honor, there's
6 just a couple of things I would like
7 to raise. I know there were some
8 issues raised by Mr. Zabell at the
9 court conference. We started out
10 yesterday's deposition with Mr. Zabell
11 calling me a moron approximately five
12 times, and when I objected and told
13 him that that was not appropriate, he
14 told me to shut up a few times. I
15 really don't think, Your Honor, that
16 that is appropriate. I think Mr.
17 Zabell should be instructed so I don't
18 have to put up with this.

19 As I was telling Mr. Zabell, I'm
20 fifty years old, I have been in the
21 Bar for twenty-five years, I have
22 never been confronted with an
23 individual in the Bar or otherwise who
24 acts like Mr. Zabell. So I would just

Anthony Cicciari

1 say that he should be reprimanded,
2 told to stop the name calling, and,
3 Your Honor, again, I don't have to put
4 up with it. And if he continues, I
5 will stop the deposition because I
6 think it is harassing, quite frankly.

7 Your Honor, you should know this,
8 with Mr. Zabell yelling at the witness
9 yesterday, Mr. Dahlem had to go to the
10 hospital. We will be submitting that
11 to the court. He has requested that
12 he not be deposed any further because
13 he was subjected to what may be a mild
14 heart attack because of Mr. Zabell's
15 antics, and he had to seek medical
16 treatment at Stony Brook Hospital
17 because of how Mr. Zabell was acting.

18 So I would just, you know, again, I
19 know that Mr. Zabell has been
20 reprimanded numerous times by courts
21 including Judge Tomlinson (phonetic)
22 on multiple occasions, you know, and
23 --

24 JUDGE BROWN: Just stop. You put a

Anthony Cicciari

1 lot on the table. If I take the time
2 to respond, we will be here all day.

3 MR. LaBUDA: Okay. I just want
4 some level of decorum.

5 JUDGE BROWN: Did the word moron
6 cross your lips during the deposition?

7 MR. ZABELL: Not during the
8 deposition.

9 MR. LaBUDA: I will be more than
10 happy to provide the record when we
11 get it. I'm pretty sure it was on the
12 record, Judge, and if it wasn't on the
13 record, Mr. Zabell, I don't think you
14 would deny calling me a moron.

15 MR. ZABELL: I told you to stop
16 acting like a moron, yes.

17 JUDGE BROWN: Let's do this
18 because, Mr. Zabell, I have had cases
19 with you in the past where we have had
20 to act where all the attorneys
21 involved were acting like school
22 children. We are not going to act
23 like school children. I don't want to
24 hear about any name calling or yelling

1 or any of that, and if I have to visit
2 the issue again, there will be
3 consequences for everybody. Are we
4 clear?

5 MR. ZABELL: Judge, I understand
6 that and I understand that ruling and
7 I will keep this as brief as possible.

8 I disagree with all of the
9 characterizations Mr. LaBuda has made.
10 I kept quiet because I was courteous
11 enough not to speak or speak over him.
12 I disagree with his contentions and he
13 is simply trying to line things up and
14 he is being dishonest in doing it by
15 painting me or my actions in a manner
16 that are inconsistent with reality.

17 JUDGE BROWN: Mr. Zabell, rewind
18 for one minute. Did you tell him to
19 stop acting like a moron, quote,
20 unquote, more or less?

21 MR. ZABELL: Not more or less.
22 Yes, absolutely, but not on the
23 record.

24 JUDGE BROWN: There is no place for

Anthony Cicciari

1 that. Act professionally. Let's get
2 through this and let's get it over
3 with. I would like to see the end of
4 this case one day.

5 MR. LaBUDA: Yes, your Honor.

6 There is one thing along those same
7 lines. Mr. Zabell during the
8 deposition was making colloquy that
9 was directed at me and the witness,
10 Mr. Dahlem. The specific one that I
11 remember was basically threatening
12 that this case is going to continue
13 on, he is going to get his fees. I'm
14 going to be making motions, and he is
15 basically threatening the client with
16 legal extortion which, quite frankly,
17 has no place whatsoever in here. But
18 when he is directing the comments at
19 the witness who is one of the
20 defendants, it's really inappropriate.
21 He is here to take a deposition, he
22 can ask questions but I would ask that
23 any colloquy like that or any comments
24 just stop because, again, it's not

Anthony Cicciari

1 appropriate.

2 I know what he's trying to do.

3 He's trying to bully and intimidate
4 the witness but he is really -- he is
5 speaking to the witness and my client
6 which I don't appreciate and I don't
7 think is countenanced under the Rules
8 of Professional Conduct.

9 JUDGE BROWN: I can't possibly
10 respond to such a general issue. I
11 mean, Mr. Zabell well knows if he is
12 getting out of line and it's on the
13 record, you will send it to me and I
14 will deal with it. I can't
15 acknowledge that right now. When the
16 thing is done and you have the record,
17 send me the excerpts, just the
18 excerpts. I don't want
19 characterizations.

20 MR. LaBUDA: That's fine.

21 JUDGE BROWN: And I will deal with
22 it then.

23 MR. LaBUDA: Thank you, your Honor.

24 JUDGE BROWN: Good luck.

Anthony Cicciari

1 MR. LaBUDA: We need it. Thank
2 you.

3 MR. ZABELL: Thank you, Judge.

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Anthony Cicciari

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I N D E X

WITNESS EXAMINATION BY PAGE

Anthony Cicciari Mr. Zabell 3

EXHIBITS

EXHIBIT PAGE

23	Defendant's Response to Plaintiff's First Set of Interrogatories to Anthony Cicciari	69
24	Defendant's Response to Plaintiff John Sudlow's First Set of Interrogatories to Anthony Cicciari	71

Anthony Cicciari

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2
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C E R T I F I C A T E

I, PATRICIA BORMANN, a shorthand reporter
and Notary Public within and for the State of
New York, do hereby certify:

That the witness whose testimony is
hereinbefore set forth was duly sworn by me,
and the foregoing transcript is a true record
of the testimony given by such witness.

I further certify that I am not related to
any of the parties to this action by blood or
marriage, and that I am in no way interested in
the outcome of this matter.

PATRICIA BORMANN